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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
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Legend

X =

A =

B =

Trust1 =

Trust2 =

State =

Date1 =

Date2 =

Date3 =

Year =

N1 =

Dear :

This letter responds to a letter dated October 31, 2019, submitted on behalf of X requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to make an election under § 754 of the Internal Revenue Code ("Code").

FACTS

According to the information submitted, X is a limited liability company formed under the laws of State and classified as a partnership for federal tax purposes. A owned an N1% in, and was a co-manager of, X when A died on Date1. A was survived by A's spouse, B. X's operating agreement included a provision that required the deceased member's estate to offer to sell the deceased member's interest to either X or to the surviving members of X. Under the assumption that X would redeem A's interest in X as a result of A's death, X did not make a § 754 election effective for the year of A's death. Trust1 was the sole beneficiary of the estate of A. The assets remaining in Trust1 after administration were to be used to fund Trust2, a qualified terminal interest property ("QTIP") trust under § 2056, for the benefit of B. An election under § 2056(b)(7) was properly made on behalf of Trust2 on A's federal estate tax return. However, X and the representatives for A's estate were unable to reach an agreement with respect to X's redemption of A's interest in X, and this interest instead was assigned to Trust2 on Date2. B died on Date3, and B's interest in Trust2 terminated at that time.

X represents that the trustee of Trust2 timely requested that X make a § 754 election for Year, the tax year of B's death, but this information was not provided to X's accounting firm prior to the filing of X's federal income tax return for Year. X further represents that X's accounting firm was unaware of B's death and the existence of Trust2 as a QTIP trust, and thus was unaware of the circumstances that made the § 754 election available and appropriate for Year. X also represents that X has acted reasonably and in good faith and that granting relief will not prejudice the interests of the government.

LAW AND ANALYSIS

Section 754 provides that a partnership may elect to adjust the basis of partnership property when there is a distribution of property or a transfer of a partnership interest. An election under § 754 applies with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election was filed and all subsequent taxable years.

Section 1.754-1(b) of the Income Tax Regulations provides that an election under § 754 to adjust the basis of partnership property under §§ 734(b) and 743(b), with respect to a distribution of property to a partner or a transfer of an interest in a partnership, must be made in a written statement filed with the partnership return for the

taxable year during which the distribution or transfer occurs. For the election to be valid, the return must be filed not later than the time prescribed by § 1.6031(a)-1(e) (including extensions) for filing the return for such taxable year.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term “regulatory election” includes an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely upon the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 120 days from the date of this letter to make a § 754 election for its Year taxable year and thereafter. The election should be made in a written statement filed with the applicable service center for association with X's return for its Year taxable year. A copy of this letter should be attached to the statement filed.

This ruling is contingent on X and its partners filing within 120 days of this letter all required returns for all open years consistent with the requested relief. Any depreciation deduction allowable for an open year is to be computed based upon the remaining useful life and using property basis as adjusted by the greater of any depreciation deduction allowed or allowable in any prior year had the § 754 election been timely made.

Additionally, as a condition of this ruling, X must calculate adjustments under § 734(b) and (c), and § 1.755-1(c), as if X had timely made the § 754 election and allocated the increase in basis among the properties held by X at that time. If the statutory period of limitation on assessment or filing a claim for refund has expired for

any year subject to this grant of late relief, then the partners must reduce their respective basis of their interests in X to reflect the additional basis adjustments under § 734 that would have been allocated under § 755 to any properties sold in such years as if the § 754 election had been timely made in proportion to their interests in X.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. In addition, § 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Under a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: